



BOARD OF APPEALS  
Diane R. Gordon, Co-Chair  
Enid Starr, Co-Chair  
Bailey S. Silbert

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 070046

Petitioner, Charles Cooney, Trustee, applied to the Building Commissioner for permission to renovate and convert an existing carriage barn into a single family residence at 26 Chestnut Street per plans. The application was denied and an appeal was taken to this Board.

On August 16, 2007, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed November 8, 2007 at 7:15 p.m. in the Main Library, Hunneman Hall, as the time and place of a hearing. Notice of the hearing was mailed to the Petitioner, to his attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published October 25, 2007 and November 1, 2007, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **COONEY TR CHARLES**  
Location of Premises: **26 CHESTNUT STREET BRKL**  
Date of Hearing: **11/08/2007**  
Time of Hearing: **7:15 p.m.**  
Place of Hearing: **Main Library, Hunneman Hall 2<sup>nd</sup> Floor**

A public hearing will be held for a variance and/or special permit from

1. 4.07; Table of Use Regulations; Use #1; Use Variance Required.
2. 5.04.1 and 2; Residential Building on Rear of a Lot; Special Permit Required.
3. 5.09.2.k; Design Review; Special Permit Required.
4. 5.14; Lot Frontage; Variance Required.
5. 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
6. 5.50; Front Yard Requirements; Variance Required.
7. 5.60; Side Yard Requirements; Variance Required.
8. 5.61; Projections into Side Yards; Variance Required.
9. 5.70; Rear yard Requirements; Variance Required.
10. 5.71; Projections into Rear Yards; Variance Required.
11. For the Design of All Off-Street Parking Facilities:
  - 6.04.4.f; Special Permit Required.
  - 6.04.5.c.1; Variance Required.
  - 6.04.5.c.2; Variance Required.
  - 6.04.12; Special Permit Required.
12. 8.02.2; Alteration or Extension; Special Permit Required.
13. 5.20; Floor Area Ratio; Variance Required.

Of the Zoning By-Law to renovate and convert the existing carriage barn into a single family residence per plans

at **26 CHESTNUT ST BRKL**

Said Premise located in a S-7 district.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

**Diane R. Gordon  
Enid Starr  
Bailey Silbert**



At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chair, Diane Gordon and Board members, Bailey Silbert and Jesse Geller. The petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C., 20 William Street, Suite 130, Wellesley, MA.

At the hearing, Lara Curtis, Planner, distributed the Planning Board Report dated October 12, 2007. Mr. Allen then described the factual background for the petition as follows:

26 Chestnut Street is a large lot with a single-family dwelling and a detached two-story wood-frame carriage barn. A narrow driveway exists to the left of the dwelling along the left side lot line leading to the barn. The rest of the property is covered with vegetation, primarily grass and several significantly-sized trees. The lot is located in the Town Green National Historic District. The surrounding neighborhood is residential and consists of primarily single-family dwellings, though some two-family dwellings abut the property to the side. Clark Park, accessed from Cypress Street, abuts the property to the rear.

The existing main dwelling, which was likely built prior to 1870, is noted in Town historical research documents as being typical of the early Mansard style, with features such as a low roof with a pronounced concave profile and segmental arched dormers. It is considered one of the largest, most elegant, and most classical of the mansard buildings in the area. The dwelling has 5,452 s.f. of floor area. The carriage barn, built in 1878, was designed in the style of the existing house, which was common in the years following the Civil War (Reed, Roger and Hardwicke, Greer; *Carriage House to Auto House: A Guide to Brookline's Transportation Buildings to 1940*; Brookline Preservation Commission: 2002; p.5). The carriage barn has a gabled roof, with a large sliding access door and hayloft door in the front. Decorative details include brackets along the front roof line and brackets and pediments over the front façade windows, which mimic the details on the main house at a smaller scale.



The petitioner, Charles Cooney, proposes to renovate the existing carriage barn and convert it into a separate single-family dwelling. Additionally, a new driveway and curb cut would be installed on the right side of the existing dwelling leading to a new parking area near the back of the house; a new circular drive would be installed in front of the existing dwelling; and two new side-by-side parking spaces would be installed where the existing drive is located.

Changes to the carriage barn to convert it into a dwelling include:

- Front façade: replace the current sliding door and hayloft door with new custom doors incorporating a vertical wood strip pattern and glass windows; change an existing window to a new entry door with a similar wood strip pattern and glass window; replace the other two windows to match the existing and repair existing pediments and brackets as needed.
- Right side façade: change an existing window to a new door with a window transom above; install a new window to the right of the new door; construct a wood stoop and stairs leading from the new door towards the rear yard; install a new basement door in an existing opening.
- Left side façade: install wider new windows on the first floor; install a skylight.
- Rear façade: install windows in basement openings.

The first floor of the barn would continue to have a largely open floor plan, with new walls being installed to allow for a living room, dining room, kitchen and half bath. The second floor would provide three bedrooms, two baths, and a loft area with a cathedral ceiling and open to the first floor below. The petitioner has indicated total floor area for the new dwelling would be 2,320 square feet, with no habitable area in the basement. This square footage calculation includes the cathedral ceiling for the first and second floors.

On site circulation for vehicles would be altered. Currently, the only vehicular site access is by an existing 15-foot-wide curb cut and 8.5-foot-wide asphalt driveway leading directly to the carriage barn. This driveway and curb cut would partially remain and lead to two parking spaces located near the front of the carriage barn and to the left of the main house. Additionally, to the right of the existing dwelling a new 12-foot-wide curb cut would be installed with a 10-foot-wide driveway leading towards the rear of the house and



a new parking area, approximately 24 feet wide by 42.3 feet deep. A new retaining wall would be installed, and several trees would be removed. A new circular driveway, also 10 feet wide, would be installed in front of the dwelling between the new and existing driveways. The concrete walk leading from the sidewalk to the existing dwelling's front entryway would be removed. The petitioner is willing to consider gravel or pavers for the front circular drive.

Mr. Allen reviewed the zoning relief necessary for the proposed building:

**Section 4.07 – Table of Use Regulations; Use #1**

**Section 9.09 – Conditions of Approval of Use Variance** – Two dwelling structures on one lot are not allowed in this single-family (S-7) district, therefore, a use variance is required. Under Section 9.09.1.d, the Board of Appeals may grant a use variance, provided that the proposal will preserve a historically or architecturally significant structure in a manner sufficient to justify the relief granted. In addition, this section triggers the need for a design review special permit under Section 5.09 because of the use variance.

**Section 5.04.1 and 2 – Residential Building on Rear of a Lot** – The Board of Appeals may modify the yard dimensions between two residential buildings on one lot by special permit.

**Section 5.09.2.k – Design Review**

A special permit under this section is required for projects requesting a use variance under Section 9.09.1.d. An impact statement was submitted. Comments on the most relevant *Community and Environmental Impact and Design Standards* (Section 5.09.4(a-l)) follow:

- a. *Preservation of Trees and Landscape* – Preservation of the carriage barn will not require the removal of any trees or destruction of landscaping, but the proposed driveway for the existing house and the circular drive in front would require the removal of several significantly-sized trees, including trees ranging from 10 inches to 26 inches in diameter.
- b. *Relation of Buildings to Environment* – The proposal retains the existing setbacks of the carriage barn and the dwelling. The relationship of the carriage barn to its surroundings is not changing, but the renovation should result in an improved building since it is now in a severe state of dilapidation. The proposed parking area for the existing dwelling would be relatively concealed from view, but the two parking spaces to serve the carriage barn would be located in the front yard of the existing dwelling and quite visible.
- c. *Open Space* – The proposal would remove a significant amount of open space for new parking facilities, but the lot would still have ample open space in its rear yard. The applicant has indicated intent to plant new trees to offset the loss of existing trees.



- d. *Circulation* – The proposal would create an additional vehicular access point for the lot, for a total of two curb cuts and three driveways, one of which would be a circular drive in front. The two parking areas would ensure the lot has enough parking spaces to meet the requirements of the Zoning By-law. The circular drive is intended to ease on-site vehicular circulation and ensure vehicles do not back out onto Chestnut Street. Since only two dwelling units would be located on the lot, conflicts between pedestrians and vehicles are not considered likely.
- e. *Stormwater Drainage* – The addition of a significant amount of impervious surface will increase the amount of stormwater runoff from the property. The petitioner has submitted plans with drainage details to address this runoff, and the petitioner states that stormwater drainage and management has been fully addressed to the satisfaction of the Engineering Department. The new parking area for the existing dwelling will change the grade of that portion of the lot, which is near a side lot line.
- j. *Heritage* – The proposal would retain an architecturally significant structure in an existing national historic district by making it usable as living space. The proposal respects the architectural integrity of the carriage barn, and ensures the continued use and viability of the barn.

**Section 5.14 – Lot Frontage** – This lot is not being subdivided under this proposal. Under Section 5.04.1, a residential building located on the rear of a lot that has another main building must have access to the street as specified in Section 5.14, which requires at least a 25-foot-wide access strip in S districts. The left side yard, where access to the rear house would be provided, is a minimum width of 27.3 feet, but the main house is required to have a 7.5-foot side yard setback, so the access strip for the carriage barn would be approximately 19.8 feet.

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.61 – Projections into Side Yards** – In no case shall any projection, including ornamental features, cornices and gutters, come within three feet of any side lot line.

**Section 5.70 – Rear Yard Requirements**

**Section 5.71 – Projections into Rear Yards** – In no case shall any projection come within 10 feet of a rear lot line.

BUILDINGS	Required	Existing	Proposed	Finding
Front Yard Setback	60 feet between buildings	14.1 feet	14.1 feet	<u>Variance / Special Permit*</u>
Side Yard Setback	7.5 feet	2.9 feet	2.9 feet	<u>Variance / Special Permit**</u>
Rear Yard Setback	30 feet	2.7 feet	2.7 feet	<u>Variance / Special Permit**</u>
Floor Area Ratio	0.35 7,645.4 s.f.	0.25 5,452 s.f.	0.356 7,772 s.f.	<u>Variance</u>
Usable Open Space	2,292 s.f.	5,477 s.f.	5,477 s.f.	<u>Complies</u>



- \* Under Section 5.04, the Board of Appeals may modify the yard dimensions between two residential buildings on one lot where it is demonstrated that there will result light, air, sunlight, and other amenities of a standard no lower than would result from such requirements.
- \*\* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity. In this case, preservation of the carriage barn will serve as the amenity.

**Section 6.04 – Design of All Off-Street Parking Facilities**

- .4.f – entrance and exit drives shall be designed to ensure maximum pedestrian and vehicular safety and minimize potential conflicts between pedestrians and motor vehicles.
- .5.c.1 – front yard setback for entrance and exit drives
- .5.c.2 – side yard setback for entrance and exit drives and parking lots

PARKING		Required	Existing	Proposed	Finding
Front Yard Setback	<i>Circular driveway</i>	20 feet	n/a	Approx. 9 feet to 27 feet	<u>Variance / Special Permit†</u>
	<i>Parking area for carriage barn</i>	20 feet	n/a	28 feet	<u>Complies</u>
Side Yard Setback	<i>New driveway</i>	5 feet	n/a	10 feet	<u>Complies</u>
	<i>Parking area for existing house</i>	7.5 feet	n/a	10 feet	<u>Complies</u>
	<i>Parking area for carriage barn</i>	7.5 feet	n/a	6.5 feet	<u>Variance / Special Permit†</u>

- † Under Section 6.04.12, where new parking facilities are being installed to serve existing structures and land uses, the Board of Appeals may by special permit substitute other dimensional requirements provided such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

**Section 8.02.2 – Alteration or Extension of Non-Conforming Structure – Special permit required.**

**Historic Preservation Commission Review:** Because the lot is located in the Town Green National Historic District, and the applicants are asking for a use variance based on the preservation of the carriage barn, the Preservation Commission reviewed the proposed alterations to the carriage barn. The applicant has obtained Preservation Commission approval of the submitted plans.

In support of the requested special permits, Mr. Allen stated that apart from changes to the façade, including with respect to the doors and window treatments, no exterior alterations or expansions are proposed, and therefore, the proposed renovation and conversion of the carriage barn will not adversely impact abutters



or the neighborhood. Moreover, renovation of the dilapidated condition of the existing carriage barn will be a marked improvement over the existing conditions, and the proposed façade changes have been approved by the Preservation Commission. The petitioner intends to provide additional landscaping and stormwater management has been addressed to the satisfaction of the Engineering Department. With regard to the requested variances, Mr. Allen stated that under **Section 9.09.1.d**, the Board may grant a use variance to allow two dwelling structures on the lot in a single-family district provided that the proposal will preserve a historically significant structure. In this case, the petitioner satisfies the Zoning By-Law because the existing carriage barn is an historically significant structure worthy of preserving. Mr. Allen further explained that a variance was needed to increase the FAR by only a small margin due to the proposed cathedral ceiling which was necessary to maintain the historic character of the barn's interior and maximize interior lighting. Mr. Allen stated that failure to grant the requested variances would cause substantial hardship to the petitioner by preventing the petitioner from fully utilizing the property and would also result in the Town's loss of a unique, and historically significant structure. Accordingly, the requested variance is particularly appropriate under the circumstances of this petition.

The Chairperson inquired if any members of the public wished to be heard. Deanne and Thomas Urmey of 29 Chestnut Place submitted a letter in strong support of the petitioner.

Lara Curtis, on behalf of the Planning Board, gave the following report:

The Planning Board is supportive of this application to renovate and convert the existing carriage barn into a single-family dwelling for a total of two dwellings on the lot. The lot is three times the size of the required minimum lot size for this zoning district, and the proposal preserves much of this land as landscaped open space. The additional dwelling unit is not expected to overburden the property with excessive density, and it provides an economic incentive to preserve and maintain the barn and the existing dwelling. The overall proposal retains much of the carriage barn's architectural integrity; the applicant has revised the initial proposal in response to comments from planning and preservation staff, and has obtained approval of the revised plans from the Preservation Commission. Though the carriage barn is located close to the side and rear lot lines, no significant additions would be made, and the use



of the carriage barn as a residence is not expected to detrimentally impact neighboring properties.

Though the Planning Board supports the proposal, some changes to the site plan should be made. The current site plan would significantly increase the overall amount of impervious surface on the lot and remove extensive landscaping, including several large trees. The applicant should survey the trees on the existing lot and determine which trees should be saved and which are in poor condition and should be replaced. Once the health of the existing vegetation has been assessed, which the applicant may have already done, the applicant should re-design the site plan to try and save as many healthy trees as possible and limit the total amount of impervious surface. The Planning Board would prefer a site plan that has only one driveway leading to a parking area for all required parking spaces, rather than the two driveway plan currently proposed. The site is large enough that the parking facilities could be re-designed so that all parking spaces are located away from the front lot line, most healthy trees are maintained, and the new dwelling has some dedicated usable open space for its residents. Additionally, particular attention should be given towards the slope of the land near the lot's side abutters, and appropriate landscaping should be planned to minimize erosion and screen the parking area.

Finally, although all Planning Board members were in favor of the use variance and the other requested relief, contingent on the condition that the site plan be re-designed and return to the Planning Board for review and approval, the Planning Board's opinion did diverge regarding a condition ensuring the continued preservation of the carriage barn. A majority of Planning Board members did support the inclusion of language in this recommendation requiring the Board of Appeals impose a condition that ensures the property is adequately maintained in its historic form. The concern underlying this condition is that should the property owner or a future property owner wish to demolish the carriage barn, or should the barn be damaged by catastrophe, the use variance allowing two units on the property is still in effect, despite that the primary purpose of the use variance is to ensure the structure's preservation. Not all Planning Board members supported the condition as they felt other safeguards were in place to preserve the carriage barn, and no such condition has been attached to Board of Appeals cases involving carriage barns and use variances in the past. This difference of opinion regarding recommended condition #4 is represented by the Board's 3-to-2 vote to recommend conditional approval of the proposal; in essence, the entire Board was supportive of the general proposal as a whole.

Therefore, should the Board of Appeals determine the proposal meets the requirements for a variance, the Planning Board voted (3-2) to recommend approval of the proposal and the submitted plans, entitled "2007 Modifications to Existing Structure," prepared by Architectural Visions and last dated October 5, 2007, subject to conditions.



Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the proposal, the relief required or to the conditions recommended by the Planning Board.

The Planning Board recommended a condition that the subject lot not be subdivided. The Chair in considering this condition opined that the subdivision of the subject lot is not before the Board at this time and should the owners wish at some point to subdivide their property they will be required to appear before the Board of Appeals a later date. Also, the Planning Board suggested a condition that the property be adequately maintained in its historic form. The Chair felt that this condition would be redundant since there are other safeguards in place to assure the preservation of the structures. The Chair also advised that should the carriage house be destroyed by fire or other calamity, the relief granted in this petition would be lost and the owner would have to reappear before the Board of Appeals should they desire any zoning relief.

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this petitioner, subject to certain conditions. The Board did not choose to include either condition #3 or #4 as recommended by the Planning Board for the reasons cited by the Chair.

The Board considered the visual relationships of site and proposed construction to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposal to convert the existing carriage barn into a second single-family dwelling on the lot will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the



traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed conversion of the existing carriage barn into a separate single-family dwelling on the lot.
2. The use as proposed by the petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed use of the carriage barn as a second single-family dwelling on the lot will not have a significant adverse affect on the supply of housing available for low and moderate income people.


In regard to the requested variances, the Board finds that the literal compliance with the requirements of the By-Law is not feasible in light of the unique character of the barn and the existing conditions at the lot in question. As a result of the lot conditions and the unique characteristics of the existing carriage barn, failure to grant the requested variances would cause substantial hardship to the property owner by preventing the owner from fully utilizing the property. Granting the requested variances to allow the petitioner to renovate and convert the existing carriage barn into a separate single-family dwelling on the lot will allow the petitioner to preserve an historically significant structure, and will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.



Accordingly, the Board grants special permits pursuant to Sections 5.04.1, 5.04.2, 5.09.2.k, 5.43, 6.04.4.f, 6.04.12, and 8.02.2 and a variance from 4.07 and 5.20 to renovate and convert the existing carriage barn into a separate single-family dwelling on the lot per plans titled "2007 Modifications to Existing Structure," prepared by Architectural Visions and last dated October 5, 2007, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations of the carriage barn shall be submitted for review and approval to the Assistant Director for Regulatory Planning after consulting with Preservation Staff.
2. Prior to issuance of a building permit, final site and landscaping plans, indicating parking spaces, driveway materials, and landscaping features, including details regarding the health of existing trees, shall be submitted to the Planning Board for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals



Diane R. Gordon

Filing Date:

A True Copy:

ATTEST



Patrick J. Ward

Clerk, Board of Appeals